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Defendant.

Case No. 06-20596-A-7

Adv. No. 07-2010

MEMORANDUM

The court conducted a bench trial of this adversary proceeding on September 29, 2007. That trial has been concluded and the post-trial briefing ordered by the court has been completed.

The complaint seeks to avoid the transfer of a one-half

1 joint tenancy interest in real property by the debtor, Alfreda M.
2 Dillard, to the defendant, Dale L. Dillard, the former spouse of
3 the debtor.

4 The debtor and the defendant were married in 1988. Prior to
5 their marriage, the defendant owned several real properties,
6 including a residential property in Manteca, and the debtor owned
7 one real property. Upon their marriage, the debtor and the
8 defendant agreed that each would continue to own their real
9 properties as their separate property.

10 In 1992 the defendant decided to purchase a new real
11 property. To finance this purchase, he decided to refinance his
12 Manteca property. However, the lender chosen by the defendant
13 would not loan him any money unless he placed the debtor on title
14 to the Manteca property and then joined him in the refinance.
15 She agreed to do this but with the understanding that the
16 defendant would be solely responsible for repaying the new loan.
17 Also, the defendant would remain the sole owner of the Manteca
18 property, despite the nominal change in record title, and he
19 would own the new property as his separate property.

20 Throughout their marriage, which ended in 1996, the
21 defendant and the debtor maintained separate bank accounts and
22 each paid the mortgages on their properties from their respective
23 accounts.

24 When the debtor and the defendant separated and divorced in
25 1996, they entered into a marital settlement agreement that
26 confirmed the debtor's ownership of the real property she had
27 owned prior to the marriage. The agreement also confirmed that
28 the defendant owned as his separate property those real

1 properties he had owned prior to marriage, including the Manteca
2 property, as well as the one real property purchased during the
3 marriage with the proceeds of the refinance of the Manteca
4 property.

5 The marital settlement agreement was incorporated into the
6 court judgment dissolving the marriage of the parties.

7 Because the Manteca property had been transferred by the
8 defendant to the debtor and the defendant, as joint tenants, at
9 the insistence of the lender, the marital settlement agreement
10 required the debtor to execute an inter-spousal deed transferring
11 record title back to the defendant alone. The defendant's
12 attorney, however, neglected to record this deed.

13 In April 2005, the defendant retained another attorney to
14 prepare a trust. It was at this point that the defendant
15 discovered that the 1996 inter-spousal deed had not been
16 recorded. His attorney contacted the debtor to execute a new
17 deed. She executed another deed on April 8, 2005 and delivered
18 it to the defendant's attorney. She demanded nothing to execute
19 the new deed because she recognized that the Manteca property had
20 been the defendant's separate property before and during their
21 marriage and because she was obligated by the marital settlement
22 agreement/judgment to return record title to the defendant.

23 The new deed to the defendant was recorded on April 13,
24 2005. On May 12, 2005, the defendant transferred record title to
25 his trust. He is the trustee and beneficiary of that trust.

26 On March 10, 2006, less than one year after executing and
27 delivering the new deed, the debtor filed a chapter 7 petition.
28 The plaintiff, Michael McGranahan, is the chapter 7 trustee.

1 At trial, the plaintiff voluntarily dismissed, without
2 objection, the claims for relief based on the assertion that the
3 execution and delivery of the new deed was an actually fraudulent
4 conveyance pursuant to Cal. Civil Code § 3439.04 and 11 U.S.C. §
5 548(a) (1) (A) .

6 The surviving claims for relief assert that the April 2005
7 transfer of the Manteca property to the defendant was a
8 constructively fraudulent transfer under Cal. Civil Code §
9 3439.05 (made applicable here by 11 U.S.C. § 550) and 11 U.S.C. §
10 548(a) (1) (B), or was a preferential transfer under 11 U.S.C. §
11 547. The plaintiff asks that the court declare that the transfer
12 was fraudulent or preferential and avoid the transfer, and enter
13 judgment for one-half of the value of the Manteca property
14 against the defendant or order the defendant to turn over one-
15 half of that property to the bankruptcy estate. If turned over
16 to the estate, the plaintiff asks that he be permitted to sell
17 100% of the Manteca property pursuant to 11 U.S.C. § 363(h) .

18 These claims for relief are core proceedings over which this
19 court has subject matter jurisdiction. See 28 U.S.C. §§
20 157(c) (2) (F) & (H) and 1334(b) .

21 In order for the debtor's transfer of the one-half interest
22 in the Manteca property to the defendant to be either fraudulent
23 or preferential, that one-half interest had to have been property
24 of the debtor at the time of the transfer. See 11 U.S.C. §§
25 547(b), 548(a) (1) and Cal. Civil Code § 3439.01(a) & (i). For
26 the reasons now explained, the court finds and concludes that it
27 was not the property of the debtor at the time of the transfer to
28 the defendant. Therefore, judgment shall be entered for the

1 defendant.

2 Had the debtor not delivered her deed to the defendant in
3 April 2005 and instead filed her petition still holding record
4 title to a one-half interest in the Manteca property, the
5 beneficial interest in her one-half interest would have still
6 belonged to the defendant. 11 U.S.C. § 541(d) recognizes that a
7 debtor's bare legal title may be subject to the equitable right
8 of a nondebtor. Section 541(d) provides in relevant part:
9 "property in which the debtor holds, as of the commencement of
10 the case, only legal title and not an equitable interest ...
11 becomes property of the estate ... only to the extent of the
12 debtor's legal title to such property, but not to the extent of
13 any equitable interest in such property that the debtor does not
14 hold."

15 When the defendant placed the debtor on the title to the
16 Manteca property, he did so without any intention of conveying
17 beneficial title to her. There is no dispute on this point.
18 Both the debtor and the defendant agree that the transfer to the
19 debtor was done at the request of a lender. The debtor
20 acquiesced only to accommodate the defendant. Both understood
21 and agreed that the defendant remained the beneficial owner of
22 the entire property despite the transfer to the debtor. The
23 later deed from the debtor to the defendant merely restored
24 record title to the defendant. The defendant held beneficial
25 title at all relevant times.

26 Whether the debtor held an equitable or beneficial interest,
27 or held bare legal title for the benefit of the defendant, is an
28 issue governed by California law. See e.g., Siegel v. Boston (In

1 re Sale Guaranty Corp.), 220 B.R. 660, 663-64 (B.A.P. 9th Cir.
2 1998), *affirmed*, 199 F.3d 1375 (9th Cir. 1999).

3 Under California law, a resulting trust is imposed when
4 circumstances indicate that one person owns the equitable or
5 beneficial interest in property, but title is taken in the name
6 of another. See Majewsky v. Empire Constr. Co., Ltd., 2 Cal. 3d
7 478, 485 (1970). A resulting trust is a remedy imposed to
8 enforce the actual or implied intentions of the parties. See
9 Stansfield v. Starkey, 220 Cal. App.3d 59, 76 (1990).

10 California courts will impose a resulting trust in cases
11 where the beneficial owner allows record title to be placed in
12 the name of another so the beneficial owner is able to obtain
13 financing that would be unavailable if title had been placed in
14 the beneficial owner's name. See Johnson v. Johnson, 192 Cal.
15 App. 3d 551, 555, 556 (1987).

16 In Johnson, for instance, a California court permitted a
17 mother to impose a resulting trust on real property held in the
18 name of her son. The son had permitted his mother to use his
19 veteran's benefits to buy a home with "GI financing." The mother
20 provided all of the money to close escrow and to repay the loan.
21 The court concluded that the mother was the equitable owner of
22 the property.

23 In this case, the defendant owned the Manteca property prior
24 to his marriage to the debtor. After marriage, he placed one-
25 half of the title in the debtor's name solely to accommodate the
26 defendant's refinance of that property. Both the debtor and the
27 defendant understood and agreed that the defendant was, at all
28 times, the sole beneficial owner of the property despite the

1 change in record title.¹

2 Therefore, if the debtor had not transferred record title
3 back to the defendant prior to filing her bankruptcy petition, by
4 virtue of section 541(d), she would hold her one-half interest
5 for the defendant's benefit. His beneficial interest in that
6 one-half interest would not have been property of the bankruptcy
7 estate.

8 Of course, had the debtor not transferred the one-half
9 interest back to the defendant, the defendant would have
10 encountered a different problem.

11 The bankruptcy trustee has the status of a hypothetical bona
12 fide purchaser for value under 11 U.S.C. § 544(a)(3). Under
13 section 544(a)(3), a bankruptcy trustee takes free of any
14 interest in real property that could be avoided by a bona fide
15 purchaser, whether or not such a bona fide purchaser actually
16 exists. See Sale Guaranty Corp., 220 B.R. at 665. The rights of
17 a bona fide purchaser are determined under state law. In re
18 Weisman, 5 F.3d 417, 420 (9th Cir. 1993); In re Van Ness Assocs.,
19 Ltd., 173 B.R. 661, 670 (Bankr. N.D. Cal. 1994).

20 Under California law, a purchaser takes subject to a prior
21 interest of which the purchaser has actual or constructive
22 knowledge. Weisman, 5 F.3d at 420. Section 544(a)(3) makes the

24 ¹ The plaintiff did not prove that the defendant repaid
25 the loan placed on the Manteca property from a source that could
26 be characterized as community property. Both the defendant and
27 the debtor testified that the defendant alone repaid the loan and
28 all other expenses of ownership. The source of his repayment,
whether from employment or rental income from the defendant's
separate property, was not established by the plaintiff. The
record does indicate that the defendant received rental income
from his separately owned real properties.

1 trustee's actual knowledge irrelevant. Sale Guaranty Corp., 220
2 B.R. at 665. However, the trustee's constructive knowledge of a
3 prior interest will prevent avoidance of that interest. Id.;
4 Weisman, 5 F.3d at 420; In re Probasco, 839 F.2d 1352, 1354 (9th
5 Cir. 1988).

6 Here, had the debtor not reconveyed her one-half record
7 interest to the defendant before filing her petition, there is no
8 doubt that the trustee would not have had constructive knowledge
9 of the defendant's equitable interest in the debtor's one-half
10 record interest.

11 Whether the trustee has such constructive knowledge turns
12 upon whether a "prudent purchaser" would have discovered the
13 defendant's beneficial interest. "A 'prudent purchaser'
14 describes someone who is shrewd in the management of practical
15 affairs and whose conduct is marked by wisdom, judiciousness, or
16 circumspection." Weisman, 5 F.3d at 420.

17 A prudent purchaser is charged with knowledge of: (1) the
18 nature of the property; (2) the current use of the property; (3)
19 the identity of the person in possession of the property; and (4)
20 the relationship between the person in possession and the person
21 whose interest the purchaser intends to acquire. Id. Where
22 possession is inconsistent with the interest of the party from
23 whom the purchaser intends to acquire title, the purchaser has a
24 duty to inquire about the rights of the occupant. Id. at 421; In
25 re Exchanged Titles, Inc., 159 B.R. 303, 306-07 (Bankr. C.D. Cal.
26 1993).

27 Here, absent a transfer by the debtor to the defendant prior
28 to the filing of the petition, the trustee's inspection of the

1 Manteca property would have revealed that one of the co-owners,
2 the defendant, possessed the property. His possession of it (or
3 possession of it by his tenant) would not have been inconsistent
4 with record title in both the debtor and the defendant.² Under
5 California law, a co-owner is entitled to possess the entire
6 commonly owned property. See Hunter v. Schultz, 240 Cal. App. 2d
7 24, 31 (1966).

8 Hence, the defendant's possession of the Manteca property
9 afforded no constructive notice to the trustee that the defendant
10 claimed the beneficial interest in the debtor's record fractional
11 title.

12 Fortunately for the defendant, he sidestepped this problem
13 by having the debtor convey her one-half interest to him before
14 she filed her chapter 7 petition. This meant that by the time
15 the petition was filed, record title matched up with the
16 defendant's beneficial ownership of the property, thereby
17 eliminating any risk to the defendant under section 544(a)(3).

18 This also meant that the property transferred to the
19 defendant by the debtor was not property of the debtor. She
20 merely restored record title to the true owner of the property,
21 the defendant. Because it was the defendant's property, not the
22 debtor's, there was no fraudulent or preferential transfer of the
23 property of the debtor.

24
25 ² The record indicates that the defendant's tenant may
26 have been in possession of the Manteca property. Possession by a
27 tenant provides constructive notice to a purchaser of the
28 lessor's interest in the property. J.R. Garrett Co. v. States, 3
Cal. 2d 379, 44 P.2d 538 (1935); Taber v. Beske, 182 Cal. 214,
187 P. 746 (1920); Claremont Terrace Homeowners' Ass'n, v. U.S.,
146 Cal. App. 3d 398, 194 Cal. Rptr. 216, 222 (1983).

1 The defendant shall lodge a proposed form of judgment that
2 awards no relief to the plaintiff.

3 Dated:

4 By the Court

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7 Michael S. McManus, Chief Judge
8 United States Bankruptcy Court
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